

REMARKS

This is responsive to the Office Action mailed November 22, 2005. Claim 1 is voluntarily amended to improve its readability, claims 13 - 15 have been cancelled in response to the restriction requirement, claims 10 - 12 have been cancelled to simplify the issues in this case, and new claims 16 - 26 have been added. Claim 1 is the only remaining independent claim.

Section 112 Rejections

In claim 6, the phrase “the elevation at which ice reaching said maximum fill elevation would contract when melted” remains at issue. The Office Action states that it “remains unclear because Applicant fails to indicate [whether] such phrase is positively recited or not.”

The undersigned did not understand that the Examiner was asking the Applicant to indicate whether the phrase is positively recited. The phrase is set forth in the body of the claim and is positively recited. Applicant intends the entire phrase quoted above to be an express claim limitation. The Examiner is encouraged to contact the undersigned by telephone if there are further issues.

Section 103 Rejections

Claims 1 - 4 and 6 stand rejected under 35 USC §103(a) as being unpatentable over Spreen, U.S. Patent No. 1,688,887 (“Spreen”) in view of Fraenkel, U.S. Patent No. 6,311,500 (“Fraenkel”) and either Shepard, U.S. Patent No. 2,863,305 (“Shepard”) or Hughes, U.S. Patent No. 5,520,278 (“Hughes”).

Applicant continues to traverse the rejections. Though the rejections are now based on Spreen, the argument remains essentially the same, i.e., that Fraenkel teaches filling the compartments of an ice cube tray to a level six percent below the maximum fill level, and indicia would have been obvious to serve that purpose.

The Examiner has not responded to Applicant's point. While Fraenkel teaches "fill levels," it does not follow that "*indicia*" would be of any use to indicate fill levels. This is because Fraenkel teaches a pre-filled and sealed ice cube trays for sale in a store, to provide a frozen version of "bottled water." This is a commercial food product that is mass produced for mass sale. The Examiner should take official notice of the commonly known fact that commercial food and beverage products that are sold in supermarkets, for example, are always filled to a precise levels or amounts, but indicia are never used for that purpose because the products are not filled by sight but by use of automatic dispensing machines. If people are not filling the containers, there is no reason, or motivation, to add indicia.

People using ice cube trays at home to make a few ice cubes have no reason to take the time and trouble to be as precise about filling as is required under the commercial practices taught by Fraenkel. People simply put the ice cube tray under the tap, slosh the water around until it is approximately the same height in each compartment, and that is good enough. Probably everyone has done this and personally knows this to be true. And there is also proof: Ice cube trays have been around at least as long as refrigerators, measuring cups have been around even longer, and everyone knows that water expands when frozen, yet ice cube trays have not heretofore been provided with filling indicia. Why is that? Clearly, there was no motivation.

As explained in the present application, the inventor recognized that, for dieting or baking purposes (for example), unlike for purposes of making ice cubes, it is advantageous to measure precise amounts of food (or beverage) for storage, and further that it would be advantageous to use a container having multiple compartments providing for measured portions. None of the references cited by the Examiner make any such suggestion.

Accordingly, it is respectfully submitted that claims 1 - 9 and 16 - 26 remaining in this case are patentably distinguished over the prior art, and the Examiner is respectfully requested to allow the claims and pass the case to issue.

Respectfully submitted,



Garth Janke
Reg. No. 40,662
(503) 228-1841